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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION**

11 JOEL ALLEN RUTIGLIANO, ) Case No. CV 13-01897 (AS)  
12 Plaintiff, ) **MEMORANDUM OPINION AND**  
13 v. ) **ORDER OF REMAND**  
14 )  
14 CAROLYN W. COLVIN, Acting )  
Commissioner of Social )  
15 Security, )  
16 Defendant. )  
17 \_\_\_\_\_ )

18 Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED  
19 that this matter is remanded for further administrative action  
20 consistent with this Opinion.

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23  
**PROCEEDINGS**

24 On October 28, 2013, Plaintiff filed a Complaint seeking review of  
25 the Commissioner's denial of Plaintiff's application for Supplemental  
26 Social Security Income. (Docket Entry No. 3). On March 3, 2014,  
27 Defendant filed an Answer and the Administrative Record ("AR"). (Docket  
28 Entry Nos. 14, 15). The parties have consented to proceed before a  
United States Magistrate Judge. (Docket Entry Nos. 8, 9). On July 23,

1 2014, the parties filed a Joint Stipulation ("Joint Stip.") setting  
2 forth their respective positions regarding Plaintiff's claims. (Docket  
3 Entry No. 19).

4 The Court has taken this matter under submission without oral  
5 argument. See C.D. Local R. 7-15; "Order Re: Procedures in Social  
6 Security Case," filed October 30, 2013 (Docket Entry No. 7).

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8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

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10 On August 3, 2010, Plaintiff, a former tester for a manufacturing  
11 company and a former deliverer for a phone book company (see AR 172),  
12 filed an application for Supplemental Social Security Income, alleging  
13 an inability to work since October 31, 2005. (See AR 148-55). At  
14 hearings on October 26, 2011 and on May 7, 2012 (during which Plaintiff  
15 was not represented by counsel), the Administrative Law Judge ("ALJ"),  
16 Lawrence I. Duran, heard testimony from Plaintiff, Plaintiff's mother,  
17 and vocational experts Roxanne Minkus and Corrine Porter. (See AR 31-44,  
18 47-83). On May 17, 2012, the ALJ issued a decision denying Plaintiff's  
19 application. The ALJ determined that Plaintiff had severe impairments  
20 -- left ilionguinal nerve block, status post inguinal hernia repair,  
21 nystagmus, visual acuity 20/200 in left eye, astigmatism, emmetropia,  
22 asthma, left groin pain, depressive disorder, and anxiety -- but found  
23 that Plaintiff was not disabled within the meaning of the Social  
24 Security Act. (See AR 13-24).

25 Following the Appeals Council's denial of Plaintiff's request for  
26 a review of the hearing decision (see AR 1-4), Plaintiff filed this  
27 action in this Court.

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1 Mary's Hospital on September 31, 2011. Plaintiff stated he had not made  
2 any attempt to submit those records to the Social Security  
3 Administration. (See AR 47-49). During the hearing, Plaintiff's mother  
4 testified that Plaintiff had been at St. Mary's Hospital several times  
5 in 2004 or 2005 for infections, pneumonia, pleurisy, and breathing  
6 problems. (See AR 81). The hearing was continued to a later date,  
7 during which time a consultative examination was going to be scheduled  
8 for Plaintiff. (See AR 82).

9 At the start of the subsequent hearing on May 7, 2012 (after  
10 Plaintiff had received ophthalmological and internal medicine  
11 consultative examinations, see AR 31), the following exchange took  
12 place:

13 ALJ: We also made an attempt to obtain the medical  
14 records from St. Mary's Medical Center. They indicated  
15 they did not have any records from you. The patient's  
16 last visit was 8/31 or '11 but apparently didn't have  
17 any records though.[<sup>1</sup>]

18 [PLAINTIFF]: They should have.

19 ALJ: Do you -- pardon?

20 [PLAINTIFF]: They should have a good amount.

21 ALJ: Well, they did not send us anything. With  
22 respect to the two consultative examinations, do you  
23 have any objections to admissibility of those records?

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24 <sup>1</sup> The record contains a Certificate of No Records signed on  
25 November 14, 2011 by Pamela Gray, the Director of Health Information  
26 Services at St Mary Medical Center. (See AR 289). The Certificate  
27 states: "I, the undersigned, being the Custodian or Keeper of Records  
28 for St. Mary Medical Center, certify that a thorough search of our  
files, carried out under my direction and control, based on the  
information provided to us for investigation, no such records were found  
on Joel Allen Rutigliano named in the attached authorization/subpoena.  
No copies of records have been provided because we do not have said  
records for one of more following reasons: . . . 'Patient's last vist at  
St. Mary Medical Center was on 8/31/11.'" (Id.)

1 [PLAINTIFF]: I, I, I, object that they don't have  
2 them.

3 ALJ: Pardon?

4 [PLAINTIFF]: I object that they don't have any  
5 records to share.

6 (AR 31, bracketed footnote added).  
7

8 In the discussion concerning the evidence in the record, the ALJ  
9 made the following statements:

10 Although the claimant has alleged an onset date of April  
11 2, 2005, the date of the claimant's current application for  
12 benefits is May 26, 2010.<sup>[2]</sup> Supplemental security income is  
13 not payable prior to the month following the month in which  
14 the application is filed (20 CFR 416.335). The undersigned  
15 has reviewed and considered the complete medical history  
16 consistent with 20 CFR 416.912(d) (Exs. 1F-13F). The positive  
17 objective clinical and diagnostic findings since the alleged  
18 onset date detailed below do not support more restrictive  
19 limitations than those assessed herein. (AR 20, bracketed  
20 footnote added).

21 The record contains very few of Plaintiff's treatment records (see  
22 AR 218-32, 234-41 [Riverside County Regional Medical Center - 15 pages;  
23 University Pain Consultants - 9 pages]), and, as discussed by the ALJ  
24 (see AR 21), all concern treatment of Plaintiff starting in July 2010.

25 Here, the ALJ erred by failing to fully develop the record. See  
26 Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983) ("In Social Security  
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28 <sup>2</sup> [As noted above, Plaintiff actually filed his application on  
August 3, 2010].

1 cases the ALJ has a special duty to fully and fairly develop the record  
2 and to assure that the claimant's interests are considered."); Cox v.  
3 Califano, 587 F.2d 988, 991 (9th Cir. 1978) ("Where the claimant is not  
4 represented, it is incumbent upon the ALJ "to scrupulously and  
5 conscientiously probe into, inquire of, and explore for all the relevant  
6 facts.'").

7 The ALJ should have obtained, at a minimum, the records from St.  
8 Mary Medical Center concerning Plaintiff's emergency room visit on  
9 August 31, 2011. While the ALJ's request/authorization/subpoena to St.  
10 Mary Medical Center is not in the record, the fact that no records,  
11 including Plaintiff's treatment records from August 31, 2011, were  
12 provided appears to indicate that there was some kind of issue with the  
13 request/authorization/subpoena itself (i.e., it sought records from a  
14 different time period).

15 Moreover, the ALJ should have obtained, or attempted to obtain,  
16 Plaintiff's medical records near or after October 31, 2005, the onset  
17 date of disability. In an undated Disability Report - Adult, Plaintiff  
18 identified medical providers who treated him near to or after the onset  
19 date, specifically, Taylor Ho, M.D. (see AR 174 [March 2005, for hernia  
20 surgery], Inland Center Medical Group (see AR 175 [October 3, 2005, for  
21 management for hernia]), James O'Brien, M.D. (see id. [February 26,  
22 2007, for hernia exam]), University Pain Consultants (see AR 176 [July  
23 7, 2010, for hernia nerve block], Riverside County Regional Medical  
24 Center (see id. [July 2, 2010, for pancreatitis]), and St. Mary Medical  
25 Center (see AR 177; see also AR 195-96 [several dates in April and May  
26 2009, breathing problems, pneumonia, blood clots in lung, and staph  
27 infection]). In a Disability Report - Appeal, Plaintiff identified  
28 medical providers who treated him near to or after the onset date,  
including Arrowhead Regional Medical Center Burn Unit (see AR 194 [March  
31, 2009 - April 6, 2009, for treatment while in a coma]), and Riverside  
Regional Medical Center (see AR 195, 2008 and June 2010, for liver and

1 pancreas issues)]. While, as noted by the ALJ, Plaintiff may not have  
2 been entitled to benefits prior to the application date, see 20 C.F.R.  
3 § 416.335, Plaintiff's medical records prior to the application and near  
4 or after the onset date were potentially relevant to the ALJ's  
5 determinations regarding Plaintiff's impairments, symptoms, credibility  
6 and limitations with respect to the period for which he could receive  
7 benefits.

8 Although, as Defendant points out (see Joint Stipulation at 10),  
9 the ALJ did take some steps to develop the record, including sending  
10 Plaintiff to two separate consultative examinations after the first  
11 hearing (see AR 290-302), attempting to obtain medical records from St.  
12 Mary Medical Center based on Plaintiff's testimony at the first hearing  
13 (see AR 289), and holding the record open for 14 days after the second  
14 hearing (which took place over six months after the first hearing), in  
15 order for Plaintiff to submit medical records concerning his seizures  
16 (see AR 42-43), the ALJ's efforts were insufficient, particularly in  
17 light of the fact that Plaintiff was not represented. Defendant's  
18 reliance on 20 C.F.R. § 416.917 ("If your medical sources cannot or will  
19 not give us sufficient information about your impairments for us to  
20 determine whether you are disabled or blind, we may ask you to have one  
21 or more physical or mental examinations or tests.") (see Joint Stip. at  
22 10) is misplaced, because the two consultative examinations may not have  
23 been necessary had the ALJ obtained, or attempted to obtain, the medical  
24 records in question.

25 Based on the ALJ's apparently faulty effort to obtain Plaintiff's  
26 medical records from St. Mary Medical Center, and based on the ALJ's  
27 lack of effort to obtain the other medical records discussed above, the  
28 ALJ simply did not fulfill his "special duty to fully and fairly develop  
the record and to assure that [Plaintiff's] interests are considered."  
See Brown, supra.

1 **B. Remand Is Warranted**

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3 The decision whether to remand for further proceedings or order an  
4 immediate award of benefits is within the district court's discretion.  
5 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
6 useful purpose would be served by further administrative proceedings, or  
7 where the record has been fully developed, it is appropriate to exercise  
8 this discretion to direct an immediate award of benefits. Id. at 1179  
9 ("[T]he decision of whether to remand for further proceedings turns upon  
10 the likely utility of such proceedings."). However, where, as here, the  
11 circumstances of the case suggest that further administrative review  
12 could remedy the ALJ's errors, remand is appropriate. McLeod v. Astrue,  
13 640 F.3d 881, 888 (9th Cir. 2011); Harman, supra, 211 F.3d at 1179-81  
14 (where there are outstanding issues that must be resolved before a  
15 determination of disability can be made, and it is not clear from the  
16 record that the ALJ would be required to find the claimant disabled if  
17 all the evidence were properly evaluated, remand is appropriate).

18 Since the ALJ failed to fully develop the record, remand is  
19 appropriate. Because outstanding issues must be resolved before a  
20 determination of disability can be made, and "when the record as a whole  
21 creates serious doubt as to whether the [Plaintiff] is, in fact,  
22 disabled within the meaning of Social Security Act," further  
23 administrative proceedings would serve a useful purpose and remedy  
24 defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.  
25 2014)(citations omitted).<sup>3</sup>

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26 <sup>3</sup> The Court has not reached any other issue raised by Plaintiff  
27 except insofar as to determine that reversal with a directive for the  
28 immediate payment of benefits would not be appropriate at this time.  
"[E]valuation of the record as a whole creates serious doubt that  
Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,  
1021 (2014). Accordingly, the Court declines to rule on Plaintiff's  
claims regarding whether the ALJ erred in finding that Plaintiff was  
able to perform certain occupations and in failing to properly assess  
Plaintiff's and Plaintiff's mother's credibility. Because this matter  
(continued...)



ORDER

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: May 29, 2015.

\_\_\_\_\_  
/s/  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE

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<sup>3</sup> (...continued)  
is being remanded for further consideration, these issues should also be considered on remand.